IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10110 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARIYANTBHAI CHAMPAKLAL SHELATAT PRESENT-PORBANDAR CEN JAIL

Versus

STATE OF GUJARAT

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Appearance:

MR KV SHELAT for Petitioner

MR KT DAVE AGP for Respondent No. 1, 5

RULE SERVED BY DS for Respondent No. 3

MS PJ DAVAWALA for Respondent No. 4

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2000

ORAL JUDGEMENT

#. District Magistrate, Ahmedabad, passed an order on December 13, 1999, in exercise of powers under Section 3(2) of the Prevention of Blackmarketing & Maintenance of

Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), detaining the petitioner-detenue under the provisions of PBM Act.

#. The grounds of detention indicate that the detenue runs a Petrol Pump namely Navgujarat Petroleum on National Highway No. 8, Maninagar, Ahmedabad. The officers of Civil Supplies Department, during the inspection, took some samples of petrol and got them examined in the laboratory to find that the octane test was not upto the mark and therefore, it was found that the detenue was indulging into activities of adulterating petrol for personal gain and thereby, in an activity which was detrimental to regular supply of essential commodity of petrol and therefore, the petitioner was detained.

#. The detenue has preferred this petition under Article 226 of the Constitution of India, raising many contentions. However, learned counsel Mr. K.V. Shelat, appearing for the petitioner has restricted his arguments to the point of delay in considering/forwarding the representation made on behalf of the detenue.

#. Mr. Shelat submitted that representation was made by wife of the detenue on December 17, 1999 to the detaining authority. Admittedly, that representation was received by the detaining authority on 6th January, 2000. In the meantime, the detention was approved by the State Government on 22nd December, 1999. The representation received by the detaining authority was forwarded to the State Government on 19th January, 2000. Mr. Shelat, therefore, submitted that the detaining authority was expected to quickly and expeditiously forward the representation to the State Government after approval was granted by the State Government, as the detaining authority had become functus officio. This delay in forwarding the representation has resulted into delayed consideration of the representation which has in turn, vitiated the continued detention of the detenue. Mr. Shelat, therefore, urged that the petition may be allowed and the detenue may be directed to be set at liberty.

#. Mr. K.T. Dave, learned AGP has opposed this petition on behalf of the State Government and the detaining authority and Ms. Davawala has opposed this petition on behalf of the Central Government.

#. The detaining authority and the State Government have filed affidavit-in-reply. Admittedly, in the affidavit-in-reply also, no attempt is made to explain

the delay in forwarding the representation between 6th January, 2000 and 19th January, 2000. This delay of 13 days having remained unexplained has vitiated the continued detention for the reason that it has affected the right of the detenue of making an effective representation.

6.1 Reference may be made in this regard to a decision of Division Bench of this Court in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat and others, 1994 (2) GLH UJ 10, where delay of 5 days in forwarding the representation, which remained unexplained, was considered good enough for quashing the order of detention. In the instant case, there is delay of 13 days, which has remained unexplained and therefore, the petition deserves to be allowed on this count alone.

#. The petition is allowed. The impugned detention order passed by the District Magistrate, Ahmedabad, on December 13, 1999 is hereby quashed and set aside. The detenue - Hariyantbhai Champaklal Shelat is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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